

WIGDOR LLP

ATTORNEYS AND COUNSELORS AT LAW

85 FIFTH AVENUE
NEW YORK, NY 10003
TEL 212.257.6800
FAX 212.257.6845
WWW.WIGDORLAW.COM

Michael J. Willemin
mwillemin@wigdorlaw.com

August 21, 2020

VIA ECF

The Honorable Ronnie Abrams
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Eckhart, et al. v. Fox News Network LLC, et al.; No. 20-CV-5593 (RA)

Dear Judge Abrams:

We represent Plaintiffs Jennifer Eckhart and Cathy Areu and write on behalf of all parties, including Defendants Fox News, LLC (“Fox News”), Tucker Carlson, Sean Hannity, Howard Kurtz (the Fox News Defendants) and Ed Henry, pursuant to the Court’s July 21, 2020 Order and Notice of Initial Conference.

I. A brief description of the nature of the action and the principal defenses thereto

A. Nature of the action

Jennifer Eckhart, a former producer and on-air personality at Fox News, asserts claims against Fox News and Ed Henry, the former co-host of Fox News’s America’s Newsroom television program. Ms. Eckhart’s claims arise under federal sex trafficking laws, 18 U.S.C. § 1591, *et seq.*, New York State Human Rights Law, (“NYSHRL”), the New York City Human Rights Law, (“NYCHRL”) and the Gender Motivated Violence Act, (“GMVA”). Ms. Eckhart alleges that she was subjected to sexual harassment, sexual assault and rape by Ed Henry during her employment with Fox News and retaliated against because she engaged in protected activity. Ms. Eckhart also filed a Charge with the Equal Employment Opportunity Commission (“EEOC”) alleging violations of 42 U.S.C. §§ 2000e, *et seq.* (“Title VII”). When the EEOC issues a Notice of Right to Sue, Ms. Eckhart will seek leave to amend to add Title VII claims.

Cathy Areu, a former on-air personality at Fox News, asserts claims under the NYSHRL and NYCHRL against Fox News, Ed Henry, Tucker Carlson, Sean Hannity, and Howard Kurtz. Ms. Areu alleges that Defendants subjected her to sexual harassment while working for Fox News and retaliated against her because she engaged in protected activity. Ms. Areu also has filed a Charge with the EEOC and will seek leave to amend to add Title VII claims against Fox News

B. Principal defenses

i. The Fox News Defendants

Defendants Fox News Networks, LLC, Tucker Carlson, Sean Hannity, and Howard Kurtz (collectively, the “Fox News Defendants”) deny all of the claims and material factual allegations set forth in the Complaint and, as noted below, intend to file a motion to dismiss Plaintiffs’ claims.

The Fox News Defendants state that Plaintiff Areu’s claims against Fox News Defendants fail in their entirety. Plaintiff Areu is an unpaid guest contributor, not an employee, who irregularly appears on Fox News. As Plaintiff Areu is not an employee she can bring *no* claims for harassment against Fox News. Regardless, Fox News maintains that each of Areu’s claims also fail on the merits: (a) as to Tucker Carlson, Sean Hannity, and Howard Kurtz, Plaintiff Areu’s allegations plainly do not rise to the level of harassment under the NYS or NYC HRLs; (b) as to Fox News, Plaintiff Areu does not and cannot allege that any of the alleged abusers are her supervisor or manager, nor can she allege that Fox News knew or should have known about any of the material allegations in her Complaint, and; (c) Plaintiff Areu’s claims for retaliation fail as she does not allege that she engaged in any protected activity and cannot show that she suffered any adverse actions. Fox News further asserts that it has thoroughly investigated any claims raised by Plaintiff Areu and found them to be without merit.

Plaintiff Eckhart’s claims against the Fox News Defendants similarly fail. Notably, Plaintiff Eckhart never complained to Fox News regarding Ed Henry’s conduct during her employment with Fox News, which terminated on June 12, 2020. Rather, she did not complain about Mr. Henry until June 25, 2020, at which point Fox News took immediate action, suspending Henry on the same day and ultimately terminating him five days later. There is therefore no basis to impute any liability on Fox News. Plaintiff Eckhart’s retaliation claims fail as she was already subject to a performance improvement plan, and indeed Fox News had already determined that she would be terminated in advance of her complaint about Mr. Henry. Finally, Plaintiff Eckhart’s sex trafficking claim is meritless on its face for numerous reasons, including that Fox News neither knew of her relationship with Ed Henry nor knowingly benefited from her relationship with Ed Henry.

Though not an exhaustive list, the Fox News Defendants anticipate that they may raise the following additional defense, among others: (a) failure to state a claim upon which relief may be granted; (b) whatever damages Plaintiffs have suffered are not attributable to the actions of the Fox News Defendants, but rather are the consequence of the Plaintiffs’ own actions or inactions; (c) the Fox News Defendants had legitimate, non-discriminatory and non-retaliatory business reasons for their actions and decisions; (d) at all times the Fox News Defendants maintained an appropriate policy and program against discrimination and harassment and an effective complaint procedure that was well known to all of its employees; and (e) at no point were the Plaintiffs treated differently than any similarly situated individual.

WIGDOR LLP

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Ronnie Abrams

August 21, 2020

Page 3

ii. Ed Henry

Defendant Ed Henry denies the facts as alleged in Plaintiffs' Complaint and also, as noted below, intends to file a motion to dismiss all of Plaintiffs' claims. Mr. Henry did not rape or assault Jennifer Eckhart, did not harass either Plaintiff, cannot be deemed an "employer" of either Plaintiff, and never supervised nor managed either Plaintiff. Any allegations to the contrary are false. The facts alleged in the Complaint against Mr. Henry do not state a claim for violating 18 U.S.C. § 1591, the NYSHRL, the NYCHRL, or the GMVA. Additionally, all of Ms. Eckhart's alleged violations of the NYSHRL and the NYCHRL are barred by the applicable Statutes of Limitations.

II. A brief explanation of why jurisdiction and venue lie in this Court. If any party is a corporation, the letter shall state both the place of incorporation and the principal place of business. If any party is a partnership, limited partnership, limited liability company or trust, the letter shall state the citizenship of each of the entity's members, shareholders, partners and/or trustees

A. Plaintiffs' position

Ms. Eckhart asserts that this Court has federal subject matter jurisdiction over her claims arising under 18 U.S.C. § 1591, *et seq.*, and supplemental jurisdiction over her related claims arising under the NYSHRL, NYCHRL and GMVA. Moreover, this Court will have federal subject matter jurisdiction over Ms. Eckhart's anticipated claims arising under Title VII.

Ms. Areu asserts that this Court has supplemental jurisdiction over her claims arising under the NYSHRL, NYCHRL and GMVA because those claims are sufficiently related to the federal claim asserted by Ms. Eckhart. Moreover, this Court will have federal subject matter jurisdiction over Ms. Areu's anticipated claims arising under Title VII.

B. Defendants' positioni. The Fox News Defendants

Jurisdiction is improper in this Court for any and all of Plaintiff Areu's claims. The Court has subject matter jurisdiction over solely Plaintiff Eckhart's claim under the federal sex trafficking statute, 18 USC § 1591. This claim relates solely to the actions of Ed Henry, an individual who is no longer affiliated with Fox News in any way. Plaintiff Areu's claims involve three entirely distinct defendants, Tucker Carlson, Sean Hannity, and Howard Kurtz, and the claims themselves rely on facts that in no way overlap with Plaintiff Eckhart's sex trafficking claims. While Plaintiff Areu similarly brings claims against Ed Henry, the claims do not arise out of any common nucleus of operative fact, and instead involve entirely separate text messages that in no way involved Plaintiff Eckhart. Permitting Plaintiff Areu's state and local claims to proceed in

WIGDOR LLP

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Ronnie Abrams
August 21, 2020
Page 4

this court would convert this action into one regarding harassment under state and local law, permitting a searching inquiry into three famous personalities under state law to substantially predominate over the more narrow federal questions regarding whether Ed Henry's conduct constituted sex trafficking under § 1591. Fox News further notes that it has received no notice of the filing of charges with the EEOC on behalf on either plaintiff.

ii. Ed Henry

This Court does not have supplemental jurisdiction over Ms. Areu's claims against Mr. Henry arising under the NYSHRL or the NYCHRL. Ms. Areu does not allege any violation of federal law and her allegations do not share a common nucleus of operative fact with Ms. Eckhart's alleged violations of federal law.

III. A brief description of all contemplated and/or outstanding motions

A. Plaintiffs' position

Plaintiffs intend on filing an amended complaint prior to the initial conference and a motion for leave to amend the Amended Complaint upon receipt of their Notices of Right to Sue. Fox News has served a "Rule 11" motion as to Ms. Areu's claims. We are of the belief that the threatened Rule 11 motion is frivolous and, in the event that the motion is actually filed, Ms. Areu will file a cross-motion seeking an award of costs and fees incurred in responding to the Rule 11 motion.

B. Defendants' position

i. The Fox News Defendants

Pursuant to Rule 11, the Fox News Defendants has not anticipated advising the Court of the Rule 11 letter sent to Plaintiffs as the 21 day period does not elapse until August 28th. As Plaintiffs have done so and advised that they intend to file an Amended Complaint, we reserved the right to file such of its noticed Motion as remains uncured by the forthcoming Amended Complaint and reserve the right to serve another Rule 11 notice should a review of the Amended Complaint warrant such notice. Further, the Fox News Defendants intend to file a motion to dismiss. For any claims not dismissed after disposition of its motion to dismiss, the Fox News Defendants anticipate filing a motion for summary judgment and reserve the right to file appropriate discovery motions as necessary.

ii. Ed Henry

Mr. Henry intends to file a motion to dismiss all claims that Plaintiffs have asserted against him. To the extent any claims are not dismissed, Mr. Henry reserves the right to file all appropriate discovery motions and a summary judgment motion.

IV. A brief description of any discovery that has already taken place, and/or that which will be necessary for the parties to engage in meaningful settlement negotiations

A. Plaintiffs' position

The parties have not yet engaged in discovery. The Fox News Defendants have taken a “no pay” position so it is unclear whether any discovery will assist in settlement. Plaintiffs believe that discovery should move forward notwithstanding Defendants’ anticipated motions to dismiss.

B. Defendants' position

i. The Fox News Defendants

The parties have not yet exchanged discovery in connection with the Plaintiffs’ claims. The Fox News Defendants believe that no discovery is warranted or appropriate pending disposition of its Motion to Dismiss and have no interest in settlement discussions with Plaintiffs. The parties’ proposed discovery schedule is set forth in their Proposed Civil Case Management Plan and Scheduling Order, which is filed concurrently with the submission of this letter.

ii. Ed Henry

Mr. Henry agrees with Plaintiffs that discovery should go forward notwithstanding Mr. Henry’s intention to file a motion to dismiss all claims asserted against him. Mr. Henry’s reputation has been wrongly destroyed by these false allegations. Immediate discovery is necessary to clear Mr. Henry’s name.

V. A brief description of prior settlement discussions (without disclosing the parties’ offers or settlement positions) and the prospect of settlement

The Fox News Defendants rejected Ms. Eckhart’s pre-litigation settlement demand without an offer and declined to engage in settlement discussions with respect to Ms. Areu.

VI. The estimated length of trial

The parties estimate that it will take 10 days to try this case.

VII. Any other information that the parties believe may assist the Court in advancing the case to settlement or trial, including, but not limited to, a description of any dispositive issue or novel issue raised by the case

N/A.

* * * * *

WIGDOR LLP

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Ronnie Abrams
August 21, 2020
Page 6

We thank Your Honor for the Court's time and consideration of this matter.

Respectfully submitted,

Wigdor LLP

By: /s/ Michael J. Willemin
Michael J. Willemin, Esq.
Renan F. Varghese, Esq.
85 Fifth Avenue
New York, New York 10003
Telephone: (212) 257-6800
Facsimile: (212) 257-6845
mwillemin@wigdorlaw.com
rvarghese@wigdorlaw.com
Attorneys for Plaintiffs

Morvillo, Abramowitz, Grandlason & Anello, P.C.

By: /s/ Catherine M. Foti
Catherine M. Foti
565 Fifth Avenue
New York, New York 10017
Telephone: (212) 880-9530
Facsimile: (212) 856-9494
cfoti@maglaw.com
Attorneys for Ed Henry

Proskauer Rose LLP

By: /s/ Kathleen M. McKenna
Kathleen M. McKenna, Esq.
Lloyd B. Chinn
Keisha-Ann Gray
Danielle J. Moss
Eleven Times Square
New York, New York 10036-8299
(212) 969-3000
kmckenna@proskauer.com
Attorneys for Fox Defendants